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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,173	07/21/2005	Vibeke Nissen	GRP-0091	9550

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/520,173	Applicant(s) NISSEN, VIBEKE	
	Examiner Arthur L. Corbin	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-07-05, 07-26, 11-02 & 11-22-06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-33 is/are rejected.
- 7) ☒ Claim(s) 6, 18 and 28-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>110705, 072606, 110206, 112206</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 6, 18 and 28-33 are objected to because of the following informalities: In claim 6, line 2, "resins" should be singular and "of" should be changed to "to". In claim 18, "comprises" should be singular. In claim 28, line 3, "homogeneous" is misspelled. In claims 29-31, line 2, "whereby" should be changed to "wherein". In claim 29, "being" should be changed to "is". In claim 30, "comprising" should be changed to "comprise". In claim 32, line 1, "tablet" should be added after "gum". In claim 33, line 1, "Granulate" should be changed to "Chewing gum granulate". Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17, 19, 23, 28, 30 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 17, 19 and 23 are indefinite since it is not clear what is intended by "teared into the gum base". There is no antecedent basis in claim 28 for: "a chewing gum center forming granulate formation" (claim 28, lines 8-9) and "said gum base additives" (claim 30). Claim 32 is indefinite since it is not clear which part of the chewing gum has the claimed water content. Corrections are required without new matter.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-19 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,753,805, cols. 2-8) or Yang (EP 0 221 850, cols. 3, 7-10 and claim 13). Both primary references disclose compressed chewing gum tablets having a water content of about 2% and a method for making them. A chewing gum composition is prepared including gum base granules composed of natural and synthetic resin and elastomers, flavors, rosin esters, sweeteners, plasticizer and active ingredients and optionally wax, each component being present in an amount as claimed by applicant (claims 3-5, 16, 28). The granules are compressed into tablets. Magnesium stearate is present in the compressed tablets as a lubricant. It would have been obvious to include the magnesium stearate lubricant in the outer layer of the tablets since the purpose of the lubricant is to reduce friction between the inner die wall and the tablet edge during ejection and to prevent capping (Cherukuri et al ,col. 2, lines 18-22 and col. 4, lines 49-60 and Yang, col. 10, lines 3-8).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 21-27 and 33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cherukuri et al or Yang. Both references disclose compressed chewing gum tablets having a water content of about 2% and composed of granules including rosin esters, flavors, plasticizer and actives, each being present in an amount as claimed by applicant.

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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-19 and 28-32 are also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 and 34 of copending Application No. 10/520,387. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to use the barrier layer in the claims of 10/520,387 to either partially or fully encapsulate the claimed gum tablet simply depending upon desired results, consumer appeal and personal preference.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 21-27 and 33 are also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20

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and 34 of copending Application No. 10/520,387. Although the conflicting claims are not identical, they are not patentably distinct from each other because finding the optimum amount of natural resin to be included in the compressed tablets would require nothing more than routine experimentation by one reasonably skilled in this art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 21-27 and 33 are further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-55 of copending Application No. 11/028,684. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasoning set forth in the last sentence of paragraph no. 10 above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-19 and 28-32 are further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-55 of copending Application No. 11/028,684 in view of Cherukuri et al or Yang. It would have been obvious to include magnesium stearate as an outer barrier layer in the gum tablets claimed in 11/028,684 since magnesium stearate is a conventional lubricant used in gum tablets, as evidenced by either secondary reference and since it would have been obvious to include the magnesium stearate as the outer layer of the tablets as set forth in the last sentence of paragraph no. 5 above

This is a provisional obviousness-type double patenting rejection.

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13. The disclosure is objected to because of the following informalities: The section entitled "Cross Reference To Related Applications" (page 2 of the amendments to the specification) needs to be updated.

Appropriate correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Arthur L. Corbin
Primary Examiner
Art Unit 1794
1-31-08